

**KENTUCKY PERSONNEL BOARD
MINUTES OF APRIL 11, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on April 11, 2008, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Christine J. Goodman, Vice-Chairman
Betty Gibson, Member
Lisa T. Hendricks, Member
Jackson M. Andrews, Member
M. Suzanne Cassidy, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Robert B. Frazer, Member
Linda R. Morris, Administrative Section Supervisor

2. **READING OF THE MINUTES OF REGULAR MEETING HELD MARCH 14, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Mr. Andrews seconded, and the motion carried 4-0, with Ms. Hendricks abstaining. (Chairman Higgins does not vote unless noted). The Board members signed the minutes.

Mr. Andrews advised the Board that he believes standard language should be changed under "Cases to be Decided" to include "and review of the video record, as appropriate." He stated that in the *Justice and Public Safety Cabinet, DJJ v. Stotts*' appeal, the Franklin Circuit Court asserted that the Board did not have authority to make judgments of credibility. Mr. Andrews stated that the Board has "real time" videos of every hearing available to them, by which the Board, as finder of fact, can make judgments of credibility. Mr. Andrews stated that by adding such language, that perhaps the appeals at the circuit level may stop. He added that about 95 percent of appeals to the Franklin Circuit Court uphold the Board. He further stated that Stotts stayed out of work for a year and a half because of the appeal, at the taxpayers' expense. He asked Mr. Crocker and Mr. Sipek for a response. Mr. Sipek advised that pursuant to statute it is the Board's "non-delegable duty" to enter a final order and to do whatever it takes to do that, including revisiting facts of the Hearing Officer. However, Mr. Sipek stated that it would be impossible to discern from the

minutes in which cases tapes were actually reviewed and by whom they were reviewed. It is not noted in either the minutes or the agenda that the Board as a whole reviewed the record, as occurred in the *Duncan* case. Mr. Sipek stated he does not know how helpful it would be to note which Board member, if any, reviewed the video record. Mr. Sipek stated that the complete record is available to the Board members, but not routinely reviewed. Mr. Sipek stated that he has argued many cases on appeal, and the Courts are not interested in the minutiae of who watched what tape, but whether there is substantial evidence to support the findings of fact. Mr. Andrews stated that the Courts do not state that they review the videos either when they make a decision, but the availability is the key. Mr. Sipek stated that he does not want to give the impression that videotapes are reviewed on a routine basis, but does not mind adding language that it is available. Mr. Andrews suggested to Chairman Higgins that it be under advisement to see some language that either the General Counsel or Executive Director could come up with for the next Board meeting. Chairman Higgins said that he was concerned too about adding the language because what is "when necessary," as it seems it could always be necessary. Ms. Cassidy shared the same sentiment. If credibility is an issue, the videotapes could be viewed; however, Chairman Higgins stated that the Board should be able to place trust in the Hearing Officer's findings of fact and recommendation.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek advised that the big news is that staff offices were moved to 25 Fountain Place, which occurred the Monday after the March Board meeting. Mr. Sipek advised that the move went smoothly, with little or no interruption of Board services. Mr. Crocker continued to hold pre-hearings in Room 38 and the phones, computers, and other office equipment were hooked up in a short amount of time. Mr. Sipek stated that walls were knocked down for the new Board room and that the Board is waiting on new carpet and hooking up video equipment in the new hearing rooms.

Mr. Sipek reported that the number of appeals filed is slightly down. The Board is getting fewer appeals filed against the Personnel Cabinet, which is probably due to the new Career Opportunities System (COS). With COS, an applicant is actually applying for a particular job and not just interested in getting on a register.

Mr. Sipek stated that staff met with officials from the Personnel Cabinet, including Tina Goodmann and Larry Gillis, concerning the Kentucky Human Resources Information System (KHRIS) project. KHRIS will be beneficial to the Personnel Board. Specifically, the Board will be able to electronically convey information to the agencies (quicker than messenger mail) and the parties will also be able to track the status of the appeals. Mr. Sipek advised that further information will be provided to the Board members in the upcoming months.

Mr. Sipek advised that the Board members have been provided with an opinion from the Franklin Circuit Court, affirming the Personnel Board's Order, on *Ruth Walker v. Health and Family Services* [Civil Action Nos. 07-CI-610 and 07-CI-620]. A Notice of Appeal was filed by the Agency at the Court of Appeals. Not to single this case out, but a continuing issue is that the Board's orders are not always self-explanatory. Therefore, the Personnel Board orders are being made more specific as to timelines and language to make an Appellant whole.

Mr. Sipek informed the Board members that the annual Hearing Officer training is scheduled for May 9, 2008, at the Kentucky History Center and begins at 8:00 a.m. Both Mr. Sipek and Mr. Crocker will be attending this training, as well as some Hearing Officers. Further, the Office of the Attorney General, Division of Administrative Hearings, has scheduled annual training for Wednesday, June 25, 2008, also to be held at the Kentucky History Center. Mr. Sipek stated that if any of the members are interested in attending either training they should contact Ms. Perkins for the information.

Chairman Higgins asked about the Westlaw project. Mr. Sipek advised that staff is continuing to provide copies of recommended orders to Westlaw for future publishing. Westlaw projects this information may be available by fall of this year.

At the conclusion of Mr. Sipek's report, Chairman Higgins asked for the Personnel Cabinet's Report. No one from the Personnel Cabinet was in attendance. Therefore, Chairman Higgins invited the parties to come forward for oral arguments in the *Townsend v. Health and Family Services*' appeal.

4. **PERSONNEL CABINET'S REPORT - None**

5. **ORAL ARGUMENTS**

A. **Nikki Townsend v. Cabinet for Health and Family Services (Request by Appellee)**

Present were the Appellant, Ms. Nikki Townsend, *pro se*, and the Hon. Amber Arnett, counsel for Appellee, who had requested oral arguments. The parties answered questions from the Board.

6. **MOTIONS - None**

7. REQUESTS FOR INVESTIGATION

A. George Robinson v. Cabinet for Health and Family Services

Mr. Sipek advised that Mr. Robinson's request for investigation has been provided to the Board members for their review. Mr. Robinson's request was included on his appeal form and his appeal is on the April Agenda (item "H") under the cases to be decided. Mr. Robinson is alleging discrimination (race and gender). The Hearing Officer granted Appellee's Motion for Directed Verdict, as the Appellant failed to prove his burden. Mr. Crocker said that Mr. Robinson could not articulate his alleged discrimination during the pre-hearing conference. Chairman Higgins stated that if the request for investigation was denied, without prejudice, that if Mr. Robinson could present facts he could always submit another request for investigation.

Ms. Cassidy moved to deny the request for investigation; Mr. Andrews seconded and the motion carried 5-0.

8. CLOSED SESSION

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Gibson seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:30 a.m.)

Chairman Higgins announced that the Board was back on the record. (11:58 a.m.)

9. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Nikki Townsend v. Cabinet for Health and Family Services

Ms. Hendricks moved to defer this matter to the next meeting of the Board. Mr. Andrews seconded and the motion carried 5-0.

B. Campbell, et al. v. Environmental and Public Protection Cabinet and Personnel
(Deferred from March)

Ms. Hendricks moved to note Appellee EPPC's exceptions, Appellee Personnel Cabinet's Exceptions, Appellants' Response and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. Gibson seconded and the motion carried 5-0.

C. Laura Aranda v. Justice and Public Safety Cabinet

Mr. Andrews moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

D. Michael Buell and Sammy Wells v. Transportation Cabinet

Ms. Goodmann moved to accept the recommended order sustaining the appeals. Ms. Gibson seconded and the motion carried 5-0.

E. ~~Robert Dungan v. Transportation Cabinet (Promotion—appeal dismissed)~~
MOVED TO MAY MEETING

F. John Forrister v. Justice and Public Safety Cabinet

Mr. Andrews moved to accept the recommended order sustaining the appeal. Ms. Cassidy seconded and the motion carried 4-1, with Ms. Hendricks opposing.

G. John Fyffe v. Justice and Public Safety Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

H. Joseph Humphrey v. Justice and Public Safety Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 4-0, with Ms. Cassidy abstaining.

I. Larry Lee Mehaffy v. Transportation Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

J. Vernon Muncy v. Transportation Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

K. George Robinson v. Cabinet for Health and Family Services

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

L. Michael Waterman v. Justice and Public Safety Cabinet

Ms. Cassidy moved to accept the recommended order sustaining the appeal to the extent a ten-day suspension was reduced to a five-day suspension. Mr. Andrews seconded and the motion carried 5-0.

Show Cause Orders – Response Filed – Appeals Dismissed

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute. The Appellant filed a response stating sufficient cause to excuse her failure to appear at the scheduled hearing.

M. Peggy Washington v. Education Cabinet (2 appeals)

Ms. Gibson moved to note Appellant's response and exceptions, Appellee's reply and amended reply, and finding the Appellant has shown sufficient cause for failure to appear at the hearing, rejects the Hearing Officer's recommended order dismissing the appeal and to remand the appeal to the active docket. Mr. Andrews seconded and the motion carried 5-0.

10. **WITHDRAWALS**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Andrews seconded and the motion carried 5-0.

- A. Diana Brown v. Education Cabinet
- B. Joseph Farley v. Office of Attorney General
- C. Henry Flores, Jr. v. Office of Attorney General
- D. John Holston v. State Fair Board
- E. Crystal McFarland v. Personnel Cabinet
- F. Kimberly McGaughey v. Environmental and Public Protection Cabinet
- G. James Maxson v. Office of Attorney General
- H. Steven Perdue v. Personnel Cabinet
- I. Charles Weaver v Transportation Cabinet and Wayne Sizemore
- J. Anna Marie Woods v. Finance and Administration Cabinet

11. SETTLEMENTS

Ms. Hendricks moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Cassidy seconded and the motion carried 5-0.

- A. Terry Harlan Pennington v. Kentucky Horse Park
- B. Michael Waterman v. Justice and Public Safety Cabinet (2007-210 and 2007-275)
- C. Debbie Engle v. Cabinet for Health and Family Services
- D. Minnie Weaver v. Transportation
- E. James Baker v. Transportation
- F. Morris Bethel v. DJJ

12. OTHER

Chairman Higgins asked if there was any further business, which Mr. Sipek advised there was not.

There being no further business, Ms. Hendricks moved to adjourn. Ms. Goodmann seconded, and the motion carried 5-0. (12:04 p.m.)

Greg Higgins, Chairman

Christine J. Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa T. Hendricks, Member

Jackson M. Andrews, Member

Robert B. Frazer, Member

M. Suzanne Cassidy, Member